Because Ms. Herweg either did not want or was unaware of her eligibility for the SSI personal needs allowance, she applied to the Iowa Medicaid program as one who would be eligible but for her institutional status.[10/] Because Ms. Herweg applied to the Iowa Medicaid program directly, they determined her eligibility pursuant to the Iowa deeming rules and ultimately disqualified her from Medicaid. Ms. Herweg is in the anomalous position of being Medicaid eligible in Iowa if she applies for SSI and Medicaid at the United States Social Security Administration Office, but ineligible for Medicaid if she applies at the Iowa Welfare Department office. She will be eligible for Medicaid if she applies for public assistance and is categorically needy. In Iowa and only in Iowa, she will be ineligible for Medicaid if she does not apply for

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10/ See 42 U.S.C. §1396a(a)(10)(11); 42 C.F.R. 435.211 and .231. These are categorically needy options covered by the state of Iowa. CCH Medicare-Medicaid Guide §15,586 (Iowa State Plan).

public assistance and instead applies under a categorically needy option. As has been discussed this is precisely the sort of intra-state equity problem which Congress prohibited by requiring comparability in the eligibility determinations for the categorically needy. The categorically needy options and the medically needy.

If the state of Iowa can establish a Medicaid deeming policy for the categorically needy at odds with the Medicaid and SSI deeming policy for the categorically needy, other states will consider themselves equally free to balkanize their policies. A "SSI state" such as Alabama might want to set a lower Medicaid needs standard than the SSI need standard. Texas might prefer a Medicaid disability standard more stringent htan the SSI disability standard. Wyoming might prefer a more restrictive resource standard. The aged, blind and disabled public assistance recipients in receipt of SSI in those "SSI states" would then be cut off

Medicaid and denied even the opportunity to "spend down" to Medicaid eligibility which is guaranteed in 209(b) states. At that point the federal Medicaid program's historic guarantee of Medicaid eligibility for the mandatory services for the categorically needy is eroded beyond recognition. States can and will begin to pick and choose which of the SSI recipients they deem least truly needy and adopt policies which terminate their eligibility. HHS will be unable to monitor, let along regulate and control states' endless permutations on income, resource, and need requirements, and the program will have lost any semblance of the Congressional intent to create a basic minimum level of eligibility and services to the poorest of the poor in this nation.

For all reasons discussed above, amicus urges this Court to find for the appellant Ms. Herweg, to reverse the decision of the District Court and the split decision of the Circuit Court

of Appeals, and to order Appellee Iowa Department of Social Services to conform its deeming policies to the federal regulations on point. 42 C.F.R. 435.723.

Respectfully submitted,

SYLVIA DREW IVIE
LUCIEN WULSIN, JR.
NATIONAL HEALTH
LAW PROGRAM, INC.

Attorneys for Gray
Panthers

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No. 80-60

In the Supreme Court of the United States

OCTOBER TERM, 1980

ELVINA M. HERWEG, ET AL., PETITIONERS

v.

ROBERT L. RAY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

KENNETH S. GELLER
Deputy Solicitor General

GEORGE W. JONES
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

JUAN A. del REAL
General Counsel

ROBERT P. JAYE
Deputy Assistant General Counsel

DAVID R. SMITH
Attorney
Department of Health and Human Services
Washington, D.C. 20201

QUESTION PRESENTED

Whether regulations of the Secretary of Health and Human Services limiting the extent to which certain states that participate in the Medicaid program may consider the income of an applicant's spouse in determining eligibility for and the amount of Medicaid assistance are arbitrary, capricious, or otherwise unlawful.

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-60

ELVINA M. HERWEG, ET AL., PETITIONERS

v.

ROBERT D. RAY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

In fiscal year 1977, more than 23 million individuals received federal and state Medicaid assistance totalling more than $16 billion. Medicaid/Medicare Management Institute, *Data on the Medicaid Program: Eligibility, Services, Expenditures* 40, 57 (rev. ed. 1979). The Secretary of Health and Human Services is responsible for requiring states that participate in the Medicaid program to provide medical assistance to each qualified applicant with a minimum of administrative delay and cost and to assure that participating states do not receive federal financial assistance for providing medical assistance to any applicant who is not among the intended beneficiaries of the Medicaid program. Consistent with

these responsibilities, the Secretary has issued regulations prescribing standards for determining the amount of income that is "available" (42 U.S.C. 1396a(a)(17)(B)) to Medicaid applicants. 42 C.F.R. 435.723, 435.700. The judgment of the district court, affirmed by an equally divided court of appeals, effectively requires the State of Iowa to consider income as "available" to certain Medicaid applicants without regard to the limitations imposed by the Secretary's regulations and, therefore, threatens to result in the denial of benefits to qualified applicants.

STATEMENT

1. The Medicaid program was established in Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, "for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris* v. *McRae*, 448 U.S. 297, 301 (1980); see *Schweiker* v. *Gray Panthers*, No. 80-756 (June 25, 1981), slip op. 1. As adopted in 1965, Title XIX only required participating states to provide medical assistance to individuals who received cash assistance under one of the four "categorically needy" assistance programs established in the Social Security Act.[1] 42 U.S.C. (1970 ed.) 1396a(a)(10); see *Schweiker* v. *Gray Panthers*, *supra*, slip op. 2 & n.1. Under Section 1902(a)(17) of the Act, 42 U.S.C. (1970 ed.) 1396a(a)(17), each participating state was required to adopt "reasonable standards * * *

[1] Old Age Assistance, Title I, 42 U.S.C. (1970 ed.) 301 *et seq.*; Aid to Families with Dependent Children, Title IV, 42 U.S.C. (1970 ed.) 601 *et seq.*; Aid to the Blind, Title X, 42 U.S.C. (1970 ed.) 1201 *et seq.*; Aid to the Permanently and Totally Disabled, Title XIV, 42 U.S.C. (1970 ed.) 1351 *et seq.*

for determining eligibility for and the extent of medical assistance" and to take into account "only such income and resources as are * * * available to the applicant or recipient." Congress also required participating states to refrain from taking into account "the financial responsibility of any individual for any applicant or recipient of assistance * * * unless such applicant or recipient is such individual's spouse" or minor, blind, or disabled child. 42 U.S.C. (1970 ed.) 1396a(a)(17)(D); see *Schweiker* v. *Gray Panthers*, *supra*, slip op. 2.

With the approval of the Secretary of Health, Education, and Welfare (now Health and Human Services), some participating states took the position that it was reasonable to expect an applicant's spouse to help pay the cost of the applicant's medical expenses and, therefore, adopted rules that took into account the spouse's income in determining Medicaid eligibility and the amount of assistance. See *Schweiker* v. *Gray Panthers*, *supra*, slip op. 2-3 & n.2. These states calculated an amount considered necessary to pay the basic living expenses of the applicant's spouse and "deemed" any income of the spouse in excess of that amount to be "available" to the applicant. *Ibid.*

In 1972, Congress replaced three of the four categorical assistance programs with a new federal program, Supplemental Security Income for the Aged, Blind, and Disabled (SSI), 42 U.S.C. 1381 *et seq.*[2] See *Schweiker* v. *Gray Panthers*, *supra*, slip

[2] As its name indicates, the SSI program replaced the categorical assistance plans for the aged, blind, and disabled. The provisions of the old categorical assistance programs remain effective in Puerto Rico, Guam, and the Virgin Islands. See Pub. L. No. 92-603, Title III, Section 303(a) and (b), 86 Stat. 1484.

op. 3. As noted, from the inception of the Medicaid program in 1965, participating states were only required to provide medical assistance to those individuals receiving cash assistance under one of the categorical assistance programs. Participating states were also entitled to receive federal financial assistance under the Medicaid program if they chose to provide medical assistance to the "medically needy," *i.e.*, certain individuals who satisfied income requirements after incurred medical expenses were deducted from their income. See 42 U.S.C. (1970 ed.) 1396a (a)(10)(B). Adoption of the SSI program was not intended to affect the traditional linkage between categorical assistance eligibility and Medicaid eligibility. See 42 U.S.C. 1396a(a)(10)(A), (C), and 1396d(a); see also 42 U.S.C. 1383c.[3]

Under the SSI program, however, the states would no longer control the standards of need for the aged, blind, and disabled. In some states, the group of individuals that would be eligible for SSI assistance, and consequently eligible for Medicaid assistance, was significantly larger than the group of individuals that was eligible under the old assistance programs for the aged, blind, and disabled. See *Schweiker* v. *Gray Panthers*, *supra*, slip op. 3. Participating states would, therefore, have been forced to: (1) expand their Medicaid assistance obligations involuntarily, (2) withdraw from the Medicaid program, or (3) reduce the level of benefits provided under their Medicaid plans. To avoid these consequences, Congress

[3] Section 2171 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35, 95 Stat. 807) gives participating states more flexibility in extending Medicaid coverage to the "medically needy" than was permissible under 42 U.S.C. 1396a(a)(10)(B) and (C). It has no bearing on the issues in this case. See note 10, *infra*.

offered the states what has come to be called the "209(b) option," which allows each state either to accept the expanded Medicaid obligations resulting from adoption of the SSI program or to limit Medicaid eligibility to the group of individuals who would have been eligible for assistance under the state Medicaid plan in effect on January 1, 1972. 42 U.S.C. 1396a(f).[4] See *Schweiker* v. *Gray Panthers*, *supra*, slip op. 3-4.

The income of an applicant's spouse is attributed to the applicant for the purpose of determining eligibility and the amount of assistance under the SSI program. When the applicant and his spouse share a single home, the income of both is considered in determining the eligibility of either. 42 U.S.C. 1382(a), 1382c(b), (f)(1). If the applicant and his spouse cease to share the same household, the income of the applicant's spouse is considered only if the spouse is an "eligible spouse." 42 U.S.C. 1382c(b).[5] By definition, an applicant's spouse cannot remain an "eligible spouse" for more than six months after the separation. *Ibid.*

Any state that participates in the Medicaid program but fails to exercise the 209(b) option (an "SSI state") is specifically required to provide medical assistance to all SSI benefit recipients. 42 U.S.C. 1396a(a)(10)(A). The Secretary's regulations

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[4] The provision was enacted as Section 209(b) of the Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1381.

[5] For administrative reasons, if the applicant and his ineligible spouse separate in the middle of a particular month, the income of the spouse is considered for SSI purposes until the end of that month.

make explicit what is implicit in the relationship of the Medicaid and SSI statutes, by requiring all SSI states to consider the income of an applicant's spouse in making Medicaid determinations to the extent, but only to the extent, that the income would be considered under the SSI statute. 42 C.F.R. 435.723, 435.700. See *Schweiker* v. *Gray Panthers, supra*, slip op. 4-5.

2. Petitioners filed this class action in the United States District Court for the Southern District of Iowa, challenging the provisions of the Iowa Medicaid Plan that permit consideration of the income of an applicant's spouse. Iowa is an SSI state, but under its Medicaid program in effect at the time of suit a "formula" was used for determining the portion of the income of an applicant's spouse that was "available" to the applicant, apparently without regard to the length of time the applicant and his spouse had been separated (see Pet. App. 76-77a, 86a). Petitioners argued that the Iowa practice was inconsistent with both the requirements of Section 1902(a)(17) of the Act, 42 U.S.C. 1396a(a)(17), and the applicable HHS regulation, 42 C.F.R. 435.723 (Pet App. 79a).[6] Petitioners also argued that the Iowa procedures violated (i) the Equal Protection Clause of the Fourteenth Amendment because they irrationally discriminated against married institutionalized Medicaid applicants and (ii) the Due Process Clause of the Fourteenth Amendment because they created an "irrebutable presumption" that the spouse is able to pay the amount computed by the

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[6] At the time the complaint was filed, the applicable HHS regulation was codified at 45 C.F.R. 248.3(b) (1976).

formula and that the money is "actually available" to the applicant (Pet. App. 80a).[7]

Relying on Section 1902(a)(17), the district court held that Iowa could consider the income of an applicant's spouse in making Medicaid determinations, but only after making individualized factual inquiries to determine the amount of the spouse's income that should be attributed to the applicant. The court did not find that the amount of the income attributed to the named petitioner in this case was unreasonable or unduly burdensome: "the operation of the [Iowa] formula as finally computed appears to make a reasonable allocation of income in the situation before the Court"; but the court attributed that fact to "mere[] coinciden[ce]" (Pet App. 85a). According to the district court, Section 1902(a)(17) requires individual factual determinations in every case of what income is "available" (Pet. App. 85a). In addition, the district court concluded that the Iowa procedure was inconsistent with the HHS regulations (*id.* at 86a), but that the regulations themselves were inconsistent with the statute (*id.* at 87a). Because HHS was not a party to the litigation, the district court did not expressly hold the regulations invalid (*ibid.*).

In response to the district court's decision, Iowa adopted a procedure for making individual factual determinations of the amount of income of an applicant's spouse that is "available" for Medicaid

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[7] The district court's reference to the Due Process Clause of the Fifth Amendment (Pet. App. 80a) is erroneous. In any event, the district court did not reach the constitutional claims (Pet. App. 87a), apparently taking the position that its statutory holding eliminated the basis for petitioners' constitutional objections.

purposes. Petitioners objected and sought clarification of the district court's order, taking the position that none of the income of an applicant's spouse could be attributed to the applicant unless it was actually contributed (see Pet. App. 90a-91a). Applicable HHS regulations (which, as previously explained, reflect SSI income standards) require this result in an SSI state after the applicant and his spouse have been separated for one month if the applicant's spouse is not an "eligible spouse," as defined in 42 U.S.C. 1382c(b).[8] Nevertheless, the district court ignored the HHS regulations and "specifically approved" (Pet. App. 94a) the procedure adopted by Iowa. Although the court acknowledged that the position urged by petitioners "might be possible under the relevant statutes," it concluded that "[t]he existence of alternative procedures is irrelevant" (*id.* at 92a). The court also held that, in making Medicaid determinations, Iowa must disregard the receipt of Social Security benefits, Railroad Retirement Board annuities, and Civil Service Commission annuities (*id.* at 90a, 92a).

The court of appeals affirmed in part and reversed in part (Pet. App. 1a-75a). Sitting en banc, the Eighth Circuit affirmed by an equally divided court that part of the district court decision requiring Iowa to make individual factual determinations of available income for Medicaid purposes without regard to the time limitations imposed by the HHS regulations (*id.* at 2a). The court of appeals unanimously re-

[8] As noted above, no one can remain an "eligible spouse" for more than six months. Therefore, after an applicant and his spouse have been separated for more than six months, HHS regulations require the result contended for by petitioners in the district court.

versed the district court's holding that Iowa must disregard Social Security benefits, Railroad Retirement Board annuities, and Civil Service annuities in making Medicaid computations (*id.* at 2a, 28a, 74a).

SUMMARY OF ARGUMENT

The regulations of the Secretary of Health and Human Services governing the extent to which SSI states may consider the income of a Medicaid applicant's spouse as "available" to the applicant were adopted pursuant to explicit statutory authority. 42 U.S.C. 1396a(a)(17)(B). Those regulations therefore must be given "legislative effect," unless they are inconsistent with the Medicaid statute, arbitrary, or capricious. See *Schweiker* v. *Gray Panthers*, No. 80-756 (June 25, 1981), slip op. 9, quoting *Batterton* v. *Francis*, 432 U.S. 416, 425 (1977).

Nothing in the language or legislative history of the Medicaid Act *requires* the Secretary to permit participating states to consider the income of a Medicaid applicant's spouse as "available" to the applicant indefinitely and without limitation. Indeed, the legislative history of the Act indicates that Congress precluded the consideration of any person's income except that of the applicant, his spouse and, in some circumstances, his parent, and expressly authorized the Secretary to define the term "available" income precisely because it "was wary of imputing the income of others to a Medicaid applicant" (*Schweiker* v. *Gray Panthers*, *supra*, slip op. 12).

The Secretary's regulations are based on his sound analysis of the interlocking provisions of the Medicaid and SSI statutes. First, states that participate in the Medicaid program but fail to exercise the 209(b) option (*i.e.*, SSI states) are expressly required to

provide medical assistance to all recipients of SSI benefits. It follows, therefore, that SSI states cannot be permitted to consider income as "available" to an applicant for Medicaid purposes if that income would not be considered in determining SSI eligibility. Otherwise, contrary to the express requirements of 42 U.S.C. 1396a(a)(10)(A), SSI recipients could be denied Medicaid benefits. Second, with carefully limited exceptions, SSI states are not entitled to federal financial assistance for providing Medicaid benefits to individuals who are ineligible to receive SSI benefits, and, therefore, income must be considered "available" to a Medicaid applicant if it would be considered in determining SSI eligibility. Third, each of the pertinent exceptions to this general rule is defined in part by reference to the SSI standards of eligibility. The Secretary has therefore required participating states to consider the income of a Medicaid applicant's spouse as "available" to the applicant for purposes of determining coverage under these exceptions to the same extent that such income would be considered in determining SSI eligibility.

Thus, HHS regulations (42 C.F.R. 435.723, 435.700) requiring SSI states to consider the income of a Medicaid applicant's spouse as "available" to the applicant to the extent, but only to the extent, that such income would be considered in determining SSI eligibility are consistent with, and indeed virtually compelled by, the Medicaid statute, and are reasonable. Because the judgment of the court of appeals directs Iowa to ignore these regulations, it is erroneous and should be reversed.

ARGUMENT

THE SECRETARY'S REGULATIONS PRESCRIBING STANDARDS FOR DETERMINING "AVAILABLE" INCOME FOR PURPOSES OF MEDICAID ELIGIBILITY AND BENEFITS IN SSI JURISDICTIONS ARE VALID AND THEREFORE DISPOSITIVE IN THIS CASE

Congress explicitly delegated authority to the Secretary of Health and Human Services to prescribe controlling standards for calculating the income and resources of all Medicaid applicants. Under Section 1902(a)(17)(B) of the Social Security Act, all state Medicaid plans must include provisions for determining eligibility and the appropriate amount of assistance that take "into account only such income and resources as are, *as determined in accordance with standards prescribed by the Secretary*, available to the applicant or recipient * * *" (42 U.S.C. 1396a(a)(17)(B); emphasis added). Thus, unless the Secretary's definition of the term "available" income is inconsistent with the Medicaid Act, arbitrary, capricious, or otherwise invalid, the regulations are entitled to "legislative effect." See *Schweiker* v. *Gray Panthers*, No. 80-756 (June 25, 1981), slip op. 9. "In a situation of this kind, Congress entrusts to the Secretary, rather than to the courts, primary responsibility for interpreting the statutory term." *Batterton* v. *Francis*, 432 U.S. 416, 425 (1977); see also *Schweiker* v. *Gray Panthers*, *supra*, slip op. 9.

A. The Secretary's Regulations are Consistent with the Medicaid Act and Reasonable

1. Section 1902(a)(17) of the Social Security Act provides, in pertinent part, that a state Medicaid Plan must include:

> reasonable standards (which shall be comparable for all groups * * *) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account *only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available* to the applicant or recipient * * *, (C) provide for reasonable evaluation of any such income or resources, and (D) *do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child* * * *.

42 U.S.C. 1396a(a)(17) (emphasis added). As noted above, Congress specifically delegated authority to the Secretary to define the term "available" income as used in Subsection (B). Moreover, Subsection (D) makes it plain that Congress did not regard consideration of the income of an applicant's spouse as inconsistent with the "available" income limitation of Subsection (B). See *Schweiker* v. *Gray Panthers*, *supra*, slip op. 9-11; *Norman* v. *St. Clair*, 610 F.2d 1228, 1235-1237 (5th Cir. 1980), cert. denied *sub nom. Schweiker* v. *Norman*, No. 80-498 (July 2, 1981).

Nevertheless, "[i]t is clear beyond doubt that Congress was wary of imputing the income of others to a Medicaid applicant." *Schweiker* v. *Gray Panthers*, *supra*, slip op. 12. It is for precisely this reason that Congress flatly prohibited the consideration of the income of anyone other than the applicant and his spouse (or, in some circumstances, his parent) and expressly authorized the Secre-

tary to prescribe standards for determining the amount of income of these persons that is "available" to a Medicaid applicant. See H.R. Rep. No. 213, 89th Cong., 1st Sess. 67-68 (1965); S. Rep. No. 404, 89th Cong., 1st Sess. 78 (1965). Thus, except to the extent permitted by the Secretary, participating states may not consider the income of a Medicaid applicant's spouse as "available" to the applicant for purposes of determining eligibility and the amount of assistance.[9]

2. The Secretary's regulations require SSI states to consider the income of an applicant's spouse in making Medicaid determinations to the extent, but only to the extent, that such income would be considered in making eligibility and benefit determinations under the SSI statute. 42 C.F.R. 435.723, 435.700. See Pet. App. 55a-61a (McMillian, J., dissenting); pages 5-6, *supra*. The regulations are based upon the Secretary's analysis of the relationship between these two complex social welfare statutes. States that participate in the Medicaid program but fail to exercise the 209(b) option (42 U.S.C. 1396a(f)) must provide medical assistance to all individuals who are SSI recipients. 42 U.S.C. 1396a(a)(10)(A); 42 C.F.R. 435.120. It is evident, therefore, that as to this group SSI states cannot be permitted to consider the income of a Medicaid ap-

[9] Although recognizing that a participating state could consider the income of a Medicaid applicant's spouse (Pet. App. 83a-85a), the district court apparently concluded that the Secretary had no power to define the term "available" income so as to limit the extent to which a state could consider such income. As explained below (see pages 17-18), the district court's decision rests entirely on the erroneous conclusion that Congress' use of the term "available" income in Section 1902(a)(17)(B) of the Act requires individualized factual determinations.

plicant's spouse as "available" to the applicant if the income would not be considered in determining eligibility and the amount of assistance under the SSI statute. See 42 C.F.R. 435.700. Otherwise, an individual who is receiving SSI benefits might, nevertheless, be found ineligible for Medicaid benefits, contrary to the unequivocal command of 42 U.S.C. 1396a(a)(10)(A).

On the other hand, with carefully limited exceptions,[10] no SSI state is entitled to federal financial assistance for providing medical assistance to aged, blind, or disabled individuals who do not meet SSI income limitations. Unless the states are required to consider income as "available" to an applicant for purposes of determining Medicaid eligibility to the extent that it would be considered in determining SSI eligibility, it is impossible to distinguish those Medicaid applicants who are eligible for but not receiving SSI benefits from those who are simply ineligible for SSI benefits, without redetermining the eligibility of every non-SSI recipient covered in each state.

To the extent relevant here, SSI states may receive federal financial assistance for providing medical assistance to: (1) individuals who would be eligible for SSI benefits or an optional state supplement if

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[10] See, *e.g.*, 42 C.F.R. 435.122, 435.130, 435.131, 435.132, 435.133, 435.134, 435.135, 435.210, 435.211, 435.230, 435.231. Iowa does not have a "medically needy" program (which would permit it to cover certain individuals who do not meet SSI income limitations), and therefore it is unnecessary in this case to consider the regulations applicable to the "medically needy." See 42 C.F.R. 435.301. For the same reason, it is unnecessary to consider the consequences of the changes in the statutory provisions relevant to Medicaid coverage for the "medically needy" effected by the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, Section 2171, 95 Stat. 807.

they applied, 42 C.F.R. 435.210;[11] and (2) individuals who would be eligible for SSI or an optional state supplement if they were not institutionalized and therefore subject to lower income standards, 42 C.F.R. 435.211; in addition, (3) if the state chooses to provide Medicaid coverage to the group that would be eligible for SSI or state supplementary payments but for institutionalization, then the state may also provide Medicaid assistance to the group of institutionalized individuals who would be ineligible for benefits under either the SSI program or the state supplement program even if they were not institutionalized, 42 C.F.R. 435.231.[12] Each of these groups is defined in part by reference to SSI income limitations. The Secretary quite reasonably, therefore, requires SSI states to use the same method for calculat-

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[11] Under Section 1616(a) of the Act, a state may make cash payments to certain individuals "as assistance based on need in supplementation of [SSI] benefits (as determined by the Secretary [of HHS])." 42 U.S.C. 1382e(a). Although the state may set higher income limitations than those applicable under the SSI statute, the state is only entitled to federal financial assistance for providing Medicaid coverage to these individuals if their gross income is no more than 300% of the SSI benefit amount (*i.e.*, 300% of the SSI income eligibility standard). See 42 U.S.C. 1396b(f)(4)(C); 42 C.F.R. 435.230, 435.1006. Furthermore, the state may only provide medical assistance to supplementary payment recipients who are receiving SSI benefits "or who would but for [excessive] income be eligible to receive such benefits." 42 U.S.C. 1396d(j).

[12] As observed above concerning Medicaid coverage of state supplementary payment recipients generally (note 11, *supra*), however, a participating state is entitled to federal financial assistance for providing medical assistance to a member of this group only if his gross income is not in excess of 300% of the SSI benefit amount. See 42 C.F.R. 435.231(a)(2), 435.1005.

ing income for purposes of Medicaid coverage under these exceptions as is used in determining SSI eligibility.[13]

Thus, HHS regulations (42 C.F.R. 435.723, 435.700) that require SSI states to consider the income of an applicant's spouse as "available" to the applicant for purposes of determining Medicaid eligibility to the same extent that it would be considered in determining SSI eligibility are not only reasonable; they are virtually "compelled by the relationship between the SSI and the Medicaid programs" (Pet. App. 61a-62a; McMillian, J., dissenting); see *Gray Panthers* v. *Administrator, Health Care Financing Administration*, 629 F.2d 180, 183 (D.C. Cir. 1980), rev'd on other grounds *sub nom. Schweiker* v. *Gray Panthers*, No. 80-756 (June 25, 1981); *Norman* v. *St. Clair*, *supra*, 610 F.2d at 1237-1238.

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[13] For example, if a state provides Medicaid coverage to individuals who would be eligible for state supplementary payments if they filed applications, it is entitled to federal financial assistance for providing medical assistance to an individual in this group only if his gross income does not exceed 300% of the SSI benefit amount. See 42 C.F.R. 435.210, 435.1006. If the state may ignore income (including that of the applicant's spouse) that would be considered in determining SSI eligibility, then the 300% limitation is rendered meaningless and the state may receive federal financial assistance for providing medical assistance to individuals whose income is greatly in excess of that limitation. On the other hand, if the state includes income that would be ignored under the SSI program, individuals who should be covered under this category will be improperly denied assistance. For example, an individual who would be eligible for SSI benefits if he applied is necessarily eligible for state supplementary payments. Yet, if the state, in determining Medicaid eligibility, may include income that is ignored for purposes of SSI, this individual may be denied medical assistance.

B. The "Deeming" Provisions of the Iowa Medicaid Plan Are Inconsistent with the Secretary's Regulations and Therefore Invalid

The district court's decision, which was upheld by an equally divided court of appeals, is plainly contrary to HHS regulations. In an SSI state such as Iowa, after the first month in which the applicant and his ineligible spouse have been separated, only income that is "actually contributed" to the applicant by his spouse may be considered "available" under the regulations. 42 C.F.R. 435.700, 435.723. Yet, the district court's order permits Iowa to consider the income of an applicant's spouse as "available" indefinitely, so long as the determination of available income is made after an individual factual hearing. As Judge Ross observed (Pet. App. 10a-11a), "there is no dispute that the new procedure approved by the district court is contrary to regulation [42 C.F.R.] 435.723." Respondents do not deny that their current procedure is contrary to HHS regulations; rather, they ignore the regulations and argue that the district court's interpretation of the statute is correct (see Br. in Opp. 15-16).

As we have shown above, however, the Secretary's "deeming regulation is based upon SSI eligibility criteria and is mandated by the Medicaid statute itself, which defines Medicaid eligibility by referring to SSI eligibility" (Pet. App. 37a; McMillian, J., dissenting). Moreover, the decision of the district court is based upon a single erroneous premise: namely, that Section 1902(a)(17) of the Act (42 U.S.C. 1396a(a)(17)) requires participating states to "provide for a factual determination in each instance of the amount of the spouse's income which is in fact reasonably available for the support of the institutionalized [Medicaid applicant]" (Pet. App.

85a). According to the district court (*id.* at 87a), "'deeming' is contrary to congressional intent whether income of the noninstitutionalized spouse is deemed available or unavailable." See also *id.* at 92a. In *Schweiker* v. *Gray Panthers*, *supra*, slip op. 12-15, however, this Court expressly rejected the contention that individualized determinations of "available" income are required in each case.

There is nothing in the plain language of Section 1902(a)(17) of the Act or its legislative history that can support the holding of the district court. While the statute reflects Congress' determination that it might be reasonable to permit the states to consider the income of a Medicaid applicant's spouse under some circumstances, it is equally plain that Congress delegated "exceptionally broad authority" (*Schweiker* v. *Gray Panthers*, *supra*, slip op. 8) to the Secretary for defining those circumstances. The Secretary has exercised that authority, and Section 1902(a)(17) cannot be read to permit participating states to ignore the standards for determining available income that it specifically authorizes the Secretary to prescribe. Nor is "[a] reviewing court free to set aside" or disregard such an exercise of authority "simply because it would have interpreted the statute in a different manner." *Batterton* v. *Francis*, *supra*, 432 U.S. at 425.

The decision in this case also seriously misapprehends the relationship between the Medicaid and SSI statutes. Having failed to exercise the 209(b) option, Iowa is statutorily required to provide Medicaid coverage to *all* SSI recipients. 42 U.S.C. 1396a(a)(10)(A); 42 C.F.R. 435.120. The income of an applicant's ineligible spouse is not considered for purposes of determining SSI eligibility after an applicant has been institutionalized for one month. See 42 U.S.C.

1382(a)(1), 1382c(b), (f)(1); 42 C.F.R. 435.723 (d). Hence, as explained above and as the Secretary's regulations provide, such income may not be considered beyond the one-month period in determining eligibility for or the amount of Medicaid benefits.

If, as in the named petitioner's case, the applicant has no income of his own and is in a private institution, he is eligible for SSI benefits. If such an applicant applies for and receives SSI benefits, then in an SSI state he would also be entitled to Medicaid benefits under the express terms of the Medicaid Act. Yet, under the district court's order, Iowa may deny Medicaid benefits to such an applicant if, after making an individual factual determination, Iowa concludes that the income of the spouse should be considered available even though it was not actually contributed and hence was not considered in determining the applicant's eligibility for SSI benefits.[14]

The district court certified a class in this case comprised of (Pet. App. 87a):

> all married couples residing in Iowa of which: (1) one spouse is eligible for Medicaid and requires institutionalization; and (2) the other spouse is not institutionalized; and (3) the non-institutionalized spouse has income which is, under current state procedures, being deemed available to the institutionalized spouse.

That class is on its face not limited to non-SSI recipients. Furthermore, the new Iowa deeming procedure,

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[14] Petitioner Elvina Herweg is not an SSI recipient, but the same analysis is appropriate with respect to an individual who would be eligible if he applied (42 C.F.R. 435.210, 435.723) or would be eligible but for his institutionalization (42 C.F.R. 435.211, 435.723), assuming, of course, that the state chooses to cover these groups, as Iowa has (see 3 Medicare & Medicaid Guide (CCH) ¶ 15,586, at 6543 (July 23, 1980)).

which was specifically approved by the district court, is by its terms applicable "to all applicants/recipients in a Title XIX Medical Institution who: 1. Have a non-institutionalized spouse * * * and 2. The non-institutionalized spouse * * * [is] ineligible for SSI * * *." [15] Thus, the district court's decision allows Iowa to adopt procedures that violate both the Secretary's regulations and the explicit command of Section 1902(a)(10)(A) of the Act, 42 U.S.C. 1396(a)(10)(A). This decision should be reversed.

CONCLUSION

The judgment of the court of appeals affirming the judgment of the district court should be reversed.

Respectfully submitted.

REX E. LEE
Solicitor General

KENNETH S. GELLER
Deputy Solicitor General

GEORGE W. JONES
Assistant to the Solicitor General

JUAN A. del REAL
General Counsel

ROBERT P. JAYE
Deputy Assistant General Counsel

DAVID R. SMITH
Attorney
Department of Health and Human Services

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[15] State of Iowa, Department of Social Services, Des Moines, Social Services Manual Letter No. 37, at 1-2 (Aug. 8, 1978). See also *id.* at 8 (contemplating application of the new procedure to SSI recipients).

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